

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11486 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

CHANCHALBEN WD/O M P THAKOR & ANR.

Versus

INDUBHAI D SHAH & ORS.

Appearance:

MR AJ PATEL for Petitioners

MR PV NANAVATI for Respondent No. 1 to 8

MR MUKESH PATEL for Respondent No. 9

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 06/02/97

ORAL JUDGEMENT

1. Heard learned counsel for the parties. The facts of the case are that Mohanji Pratapji Thakor, predecessor of the petitioners, owned and possessed land bearing survey No.19, Hissa No.5, admeasuring 37 gunthas situated in the sim of village Bodakdev, Taluka Dascroi, District Ahmedabad. The said land was a fragment within the meaning of the Bombay Prevention of Fragmentation and

Consolidation of Holdings Act, 1947 (hereinafter referred to as the Act, 1947), and as such, it could not have been sold by deceased Mohanji Pratapji Thakor. The petitioners have come up with a case that the respondents no.1 to 8 fraudulently obtained the signatures of the deceased Pratapji Mohanji Thakor on some documents and purported to purchase the said land from him during his life time. The respondents no.1 to 8 got the said land mutated in their name in the revenue record also. It is the case of the petitioners that the land in dispute continued to be in possession of the deceased Mohanji Pratapji Thakor till his death on 21-2-1984 and thereafter the petitioners continued in possession of the land as his heirs and legal representatives. The Assistant Collector, Viramgam Prant at Ahmedabad initiated proceedings which were numbered as Con.Case No.85 of 1991. In the said case, Mohanji Pratapji Thakor was impleaded as party opponent no.1 though he died on 21st February, 1984. However, the petitioners when came to know about the said proceedings they engaged an advocate to represent their case before the Assistant Collector. The Assistant Collector after examining the pros and cons and after hearing the parties held that there was violation of the provisions of sec. 9 of the Act, 1947, and under his order dated 17th March, 1992, he ordered for summary eviction of the respondents No. 1 to 8 from the land in dispute. The respondents No.1 to 8 filed revision application against the aforesaid order before the Additional Secretary, Revenue Department (Appeals), Ahmedabad. The petitioners though were the necessary parties, being owners of the land in dispute, were not impleaded as party-opponent in the said revision application by the respondents No.1 to 8. The said revision application has been allowed by the Government behind the back of the petitioners under the order dated 31st July, 1992. Hence, this Special Civil Application.

2. The counsel for the respondents does not dispute the fact that none of the petitioners have been impleaded as party to the revision application filed by the respondents No.1 to 8. The Assistant Collector, concerned, has decided the matter against the respondents no.1 to 8 and the State Government has decided the matter in revision against the petitioners. The order passed by the State Government certainly resulted in prejudice to the rights of the petitioners, and as such, that could have been done only after impleading them as party and giving them an opportunity of hearing. From annexure 'D' which has been filed on record of this Special Civil Application, the Assistant Collector, Viramgam, Ahmedabad was only the opponent therein. So the order of the State

Government passed in its revisional powers, annexure 'D' dated 31st July, 1992 cannot be allowed to stand.

3. In the result, this Special Civil Application succeeds and the order dated 31-7-1992 passed by the Additional Secretary, Revenue Department (Appeals), in Appeal No.SRD.Con.AMD.4 of 1992, is set aside and the matter is remanded back to the said authority to decide the matter afresh after hearing the petitioners. The petitioners and the respondents No.1 to 8 are directed to present themselves before the said authority on 7th April, 1997. It is expected of the said authority to decide the matter within reasonable time, say within six months from the date of appearance of the parties. Rule is made absolute in the aforesaid terms with no order as to costs.

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